

CHAPTER 8

POSTTRIAL DUTIES AND THE REVIEW PROCESS

As an LN, it is important that you know something about the mechanics of court-martial reviews. This chapter prepares you for your court-martial posttrial duties, with the exception of transcription of the record of trial, from the time the trial adjourns until final disposition of the case.

Topics covered in this chapter are the preparation of the results of trial, confinement orders, the review process including the preparation of the staff judge advocate's (SJA's) recommendation, the convening authority's (CA's) action, promulgating orders, and required service record entries.

POSTTRIAL ADMINISTRATIVE DUTIES

There are numerous duties that must be completed at the conclusion of any trial by court-martial. In this section we will discuss the preparation of results of trial, confinement orders, restriction, and extra duty orders. We will also discuss the deferment process of a sentence to confinement and what your role will be in this process.

Other posttrial duties include the preparation of the SJA's recommendation, sending the SJA's recommendation to the accused and the detailed defense counsel (DC), preparation of the CA's action, and preparation of the promulgating order and required service record entries. These issues will be addressed in the order in which they occur in the court-martial process.

REPORT OF RESULTS OF TRIAL

Immediately following final adjournment of a court-martial, the trial counsel (TC) has a duty to notify the accused's immediate commander, the CA, or the CA's designee of the results of trial. Additionally, if the sentence includes confinement, the notification must be in writing with a copy sent to the commanding officer (CO) or the officer in charge (OIC) of the brig or confinement facility concerned.

A locally prepared form similar to that illustrated in figure 8-1 may be used for this purpose. The form should contain sufficient information to identify the

accused, show the findings and sentence, and the disposition of the accused after trial.

Distribution requirements for the report of results of trial include original to the CA; one copy to the CO of the accused (if different); one copy to the CO or OIC of the brig (if confinement is adjudged); one copy for the record of trial; and one copy for the officer exercising general court-martial jurisdiction (OEGCMJ).

POSTTRIAL CONFINEMENT

An accused maybe placed in posttrial confinement if the sentence adjudged includes death or confinement. The confinement portion of a sentence runs from the date the sentence is adjudged.

Who May Order Confinement

Unless limited by a superior commander, a commander of the accused may order the accused into posttrial confinement when it is adjudged. A commander authorized to order posttrial confinement may delegate this authority to the TC. Normally the TC will prepare and sign the confinement order by the direction of the accused's CO.

Confinement Order

As a matter of policy, no member of the Navy may be confined without a written confinement order. The Confinement Order, NAVPERS 1640/4, is the document used to satisfy this requirement.

Upon notification from the TC of the results of trial, the accused's CO must take prompt and appropriate action with respect to the restraint of the person tried. If the accused has requested deferment of service to confinement and the request is approved by the CA, no confinement order is prepared at this time. However, if there is no deferment request by the accused, the TC will prepare a confinement order signing it by direction of the CA.

Distribution requirements for the confinement order include sending at least three copies with the package to the brig or confinement facility. You should inquire into the actual number of copies required by the brig your

DATE _____

Subj: REPORT OF RESULTS OF TRIAL

2. Trial by _____ court-martial at _____, convened by _____

Charges & Specifications
(with description of offense(s))

Findings

5. Date sentence adjudged:

Members

_____ Enlisted Members

a. Pretrial confinement: _____ days

b. Judicially ordered credits: _____ days

Total credits: _____ days

Trial Counsel/Sumnlary Court-Martial

Figure 8-1—Report of results of trial.

Deferment of Confinement

accused. If the accused requests deferment, the deferment may be granted any time after the adjournment of the court-martial, as long as the sentence has not been executed. If the deferment request is used to carry out the intent of a pretrial agreement (PTA) term suspending all confinement, the accused may submit the request along with the PTA. The CA may sign both documents at the same time and this maybe done before the trial.

CONFINEMENT ORDER <small>NAVPERS 1640/4 (Rev. 7-82) S/N 0106-LF-016-4023</small>																					
NAME (Last, first, middle)	SSN	RATE/GRADE	BRANCH SER																		
DOE, John NMN	222-22-2222	BTFN	USN																		
SHIP OR ORGANIZATION		DATE																			
USS HERMITAGE (LSD 34)		28 February 19CY																			
STATUS																					
DETAINED (Alleged violation of UCMJ Articles)	CONFINED AS RESULT OF <div style="display: flex; justify-content: space-between;"> <input type="checkbox"/> NJP <input type="checkbox"/> SCM <input checked="" type="checkbox"/> SPCM <input type="checkbox"/> GCM </div> CHARGES AND SPECIFICATION CONVICTED OF VIOL ART. 128, UCMJ VIOL ART. 134, UCMJ																				
"I have been informed that I am being confined for the above alleged offense(s)"	SENTENCE ADJUDGED RIR to E-3, DATE FOP \$300x3; CONF x 2 MOS 28 Feb CY IF SENTENCE DEFERRED, DATE DEFERMENT TERMINATED:																				
Date _____ Signature of accused _____	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 40%;">SENTENCE APPROVED</th> <th style="width: 30%;">APPROVED BY</th> <th style="width: 30%;">DATE</th> </tr> </thead> <tbody> <tr><td> </td><td>CA</td><td> </td></tr> <tr><td> </td><td>SA</td><td> </td></tr> <tr><td> </td><td>NCMR</td><td> </td></tr> <tr><td> </td><td>COMA</td><td> </td></tr> <tr><td> </td><td>OTHER</td><td> </td></tr> </tbody> </table>			SENTENCE APPROVED	APPROVED BY	DATE		CA			SA			NCMR			COMA			OTHER	
SENTENCE APPROVED	APPROVED BY	DATE																			
	CA																				
	SA																				
	NCMR																				
	COMA																				
	OTHER																				
Date _____ Signature of witness _____	PRE-TRIAL CONFINEMENT NECESSARY:																				
<input type="checkbox"/> TO ENSURE THE PRESENCE OF THE ACCUSED AT THE TRIAL <input type="checkbox"/> BECAUSE OF THE SERIOUSNESS OF THE OFFENSE CHARGED																					
CONFINEMENT DIRECTED AT		TYPED NAME/RANK/TITLE PAUL T. BOAT, LT, JAGC, USNR, BY DIR GO USS HERMITAGE (LSD 34)																			
HOUR 1600	DATE 28 February 19CY	SIGNATURE <i>Paul T. Boat, J. JAGC, USNR</i>																			
MEDICAL CERTIFICATE																					
The above named individual was examined by me at _____ on _____ and found to be																					
(HOUR) (DATE)																					
<input type="checkbox"/> fit <input type="checkbox"/> unfit for confinement. The following irregularities were noted during the examination. (if none, so state)																					
<input type="checkbox"/> I certify that from an examination of _____																					
Name Rate SSN																					
and of the place where he/she is to be confined, I am of the opinion that the execution of the foregoing sentence to confinement on (bread and water) (diminished rations) will/will not produce serious injury to his/her health.																					
TYPED NAME/RANK/TITLE		SIGNATURE																			
RECEIPT FOR PRISONER																					
The above named individual was received at _____																					
(NAME OF BRIG/CORRECTIONAL FACILITY)																					
at _____ on _____																					
(HOUR) (DATE)																					
TYPED NAME/RANK/TITLE		SIGNATURE																			

Figure 8-2.—Confinement Order, NAVPERS 1640/4.

WHO MAY DEFER.— The CA or, if the accused is no longer under the CA's jurisdiction, the OEGCMJ over the command to which the accused is assigned may, upon written application of the accused, defer the sentence.

ACTION ON DEFERMENT REQUESTS.— The authority acting on the deferment request may, in that authority's discretion, defer service of a sentence to confinement. The decision to defer is a matter of command discretion. The accused has the burden to

show that both the interests of the accused and the community in release outweigh the community's interest in confinement. Factors that the authority acting on a deferment request may consider in determining whether to grant the deferment request include the following:

- The chance of the accused's flight
- The chance that the accused may commit other offenses, intimidate witnesses, or interfere with the administration of justice
- The nature of the offenses (including the effect on the victim) of which the accused was convicted
- The sentence adjudged
- The command's immediate need for the accused
- The effect of deferment on good order and discipline in the command
- The accused's character, mental condition, family situation, and service record

Although the decision to grant or deny the deferment request falls within the CA's sole discretion, that decision is subject to judicial review only for abuse of discretion. The action of the CA in granting or denying the accused's application for deferment is a written document of which a copy is provided to the accused.

RESTRAINT WHEN DEFERMENT IS GRANTED.— No form of restraint or other limitation on the accused's liberty is authorized as a substitute for the deferred confinement. The accused may, however, be restrained for an independent reason; for example, pretrial restraint resulting from a different set of facts in which disciplinary action is anticipated.

TERMINATION OF DEFERMENT.— Deferment to a sentence of confinement ends when:

- the CA acts on the sentence, unless the CA specifies in the action that service of the confinement after the action is deferred. In this case, deferment terminates when the conviction is final.
- the sentence to confinement is suspended.
- the deferment expires by its own terms.
- the deferment is rescinded by the officer who granted it or, if the accused is no longer under his or her jurisdiction, by the OEGCMJ over the accused's command.

RESCISSION OF DEFERMENT.— Deferment may be rescinded when additional information comes to the authority's attention that, in his or her discretion, presents grounds for denial of continued deferment. The accused must be given notice of the intended rescission and of the right to submit written matters. The accused, however, may be required to serve the sentence to confinement pending this action.

RECORD OF PROCEEDINGS.— Any document relating to deferment or rescission of deferment is made a part of the record of trial. The dates of any periods of deferment and the date of any rescission must appear in the CA's actions or supplementary actions.

RESTRICTION AND EXTRA DUTY ORDERS

An accused may be awarded restriction and/or extra duty as a sentence at a court-martial. Chapter 6 covers the preparation of restriction and extra duty orders. No difference exists in the preparation of these orders to affect a sentence from a court-martial with the exception of stating in the text that the restriction and/or extra duty is the result of a court-martial.

Restriction

Restriction is the least severe form of deprivation of liberty and it involves moral rather than physical restraint. Generally, the restricted member continues to perform military duties, but is required to report to a specified place at specific periods of time. Both officer and enlisted members may be restricted. The restriction order should be prepared by you and then you should turn it over to the chief master-at-arms (CMAA) for execution of the sentence.

Extra Duty

Extra duty is the performance by enlisted members of duties in addition to those normally assigned. Extra duties normally should not exceed 2 hours per day, after which the accused is granted liberty—unless, of course, the member's liberty has been otherwise curtailed. Extra duty is not performed on Sundays but Sunday is counted as a day of performing extra duty. You should meet with your CMAA to determine who prepares the extra duty letter and log. Normally, the CMAA performs this function.

REVIEW OF COURTS-MARTIAL

When proceedings at the trial court level have been completed, a record of trial must be prepared. Chapter 4 covers the preparation of the record of trial. Once prepared, the record of trial will be authenticated by the signature of a person who declares that the record accurately reports the proceedings. Except in unusual circumstances this person will be the military judge or summary court-martial officer. According to JAG/COMNAVLEGSVCCOMINST 5814.1, the NLSO or NLSO detachment responsible for the preparation of the record of trial will attach an appropriate posttrial checklist (GCM, SPCM [BCD], or SPCM [non-BCD]) to the original record of trial before sending the record to the CA for further review. The record of trial will then be sent to the CA and the review process begins. No part of the sentence, with the exception of confinement, can be executed against the accused until the CA has acted on the record.

Within certain time constraints, depending upon the type of court-martial and sentence adjudged, the accused may submit written “matters” to the CA. These matters can affect the CA’s decision whether to approve or disapprove the trial results. In a general court-martial (GCM) or a special court-martial (SPCM) case involving a bad-conduct discharge (BCD), the CA’s decision must await the written recommendation of the SJA or the legal officer (LO). With the benefit of these inputs, the CA determines, within his or her sole discretion, whether to approve or disapprove the sentence adjudged. This determination is in the form of a written legal document called the CA’s action.

After the CA takes his or her action, the record of trial is sent for further review. The summary court-martial (SCM), the SPCM not involving a BCD, and all other noncapital courts-martial in which the accused waived appellate review are reviewed by a judge advocate assigned, in most cases, to the staff of an OEGCMJ. This written review will normally end the mandatory review process. However, in certain cases the OEGCMJ will have to take final action.

After initial review by the CA, the GCM and those SPCMs that include a BCD will normally be reviewed further by the Navy-Marine Corps Court of Military Review (NMCMR). Under certain circumstances, the case can also be considered by the Court of Military Appeals (COMA) and, possibly, the United States Supreme Court.

THE CONVENING AUTHORITY’S REVIEW

The CA is the CO of the unit or, for the purpose of review, may be a successor in command or the OEGCMJ. The person who convenes the court-martial in a particular case normally is the CA who takes initial action on the record of trial. The power of the CA to take action rests in the office, not in the person.

When an assigned commander is not present for duty with his or her command because of incapacitation, leave, or for any other cause, the commissioned officer temporarily succeeding to command during that absence is the officer commanding for the time being and, as such, is authorized to take initial action on the record of trial. When it is impractical for the person who convened the court or the officer commanding for the time being or a successor in command to take initial action on the record of trial, this review may be taken by any OEGCMJ.

Matters Submitted By the Accused

A copy of the record of trial must be served on the accused as soon as the record has been authenticated. This provides the accused with the opportunity to submit any written matters that may affect CA’s decision whether or not to approve the trial results. The content of such matters is not subject to the Military Rules of Evidence and could include the following:

- Allegations of error affecting the legality of the findings and/or sentence
- Portions or summaries of the record and copies of documentary evidence offered or introduced at the trial
- Matters in mitigation that were not available for consideration at the trial
- Clemency recommendations (the defense may ask any person for such a recommendation, including the members, military judge, or TC)

The option of the accused to submit matters to the CA must be exercised within specifically defined time periods. Except in an SCM case, submission of matters by the accused must be made within 10 days after the accused is served with an authenticated record of trial and, if applicable, the service on the accused of the recommendation of the SJA or the LO. In an SCM case, submission must be made within 7 days after the sentence is announced. If the accused shows that additional time is required to submit matters, the CA may, for good cause shown, extend the applicable period

stated previously for not more than an additional 20 days.

Recommendation of the Staff Judge Advocate or Legal Officer

In addition to the input from the accused, the CA must receive a written recommendation from his or her SJA or LO before taking action on a GCM or an SPCM involving a BCD. As required by JAG/COMNAV-LEGSVCCOMINST 5814.1 an SJA/legal officer recommendation checklist must be attached to the original record of trial at this point. The SJA/legal officer is responsible for using this form to assist in the preparation of the recommendation.

Care must be taken to make sure the SJA or the LO is not disqualified from submitting this recommendation. Disqualification will result when the SJA or the LO acted as a member, military judge, TC, assistant TC, or, more commonly, the investigating officer in the case. If the SJA or the LO is disqualified, the CA may request that another SJA be designated to prepare the recommendation.

The purpose of this recommendation is to assist the CA in deciding what action to take on the case. The recommendation must be a concise written communication summarizing the following:

- The findings and sentence adjudged
- A summary of the accused's service record, to include length and character of service, awards and decorations received, and any records of nonjudicial punishment (NJP) and/or previous convictions
- A statement of the nature and duration of any pretrial restraint
- A statement of any action the CA is obligated to take under a PTA or a statement on why the CA is not obligated to take specific action under the agreement
- A specific recommendation as to the action to be taken by the CA on the sentence

Identifying legal errors is not one of the required goals of this recommendation. In cases of acquittal of all charges and specifications, and cases where the proceedings were terminated before findings with no further action contemplated, the SJA's or the LO's recommendation is not required.

A sample letter addressing the SJA's recommendations is illustrated in figure 8-3.

Before you send the record of trial and the recommendation of the SJA to the CA for action, the SJA or the LO will cause a copy of the recommendation to be served on the counsel for the accused. A separate copy will be served on the accused. If it is impractical to serve the recommendation on the accused, the accused's copy will be sent to the accused's DC. A statement will be attached to the record explaining why the accused was not personally served. Figure 8-4 shows you an example of a memorandum forwarding the SJA's recommendations to the DC. The DC must acknowledge receipt of the SJA's recommendations. Figure 8-4, enclosure (2), is an acknowledgement receipt that the DC must fill out and return to the SJA. This is for the purpose of determining the date the DC received the recommendations of the SJA. Figure 8-5 illustrates the type of letter to use for receipt of the SJA's recommendations by the DC.

The accused's counsel has 10 days from the service of the record of trial or receipt of the recommendations, whichever is later, to submit written comments on the recommendation for consideration by the CA. These comments may include corrections or rebuttals to any matter in the recommendation believed to be erroneous, inadequate, or misleading, and may comment on any other matters desired. The SJA or the LO may supplement his or her recommendation based upon the DC's response. Figure 8-6 is an example of a response from a DC to an SJA's recommendation.

Action By the Convening Authority

The first official action to be taken with respect to the results of trial is the CA's action. All materials submitted by the accused, the SJA and/or the LO, and the DC are preparatory to this official review. The CA may take action only after the applicable time periods have expired or the accused has waived the right to present matters, whichever is earlier. As required by JAG/COMNAVLEGSVCCOMINST 5814.1, use the CA's action checklist to assist in the preparation of the CA's action and attach this checklist to the original record of trial.

The CA's action is a legal document attached to the record of trial setting forth, in prescribed language, the CA's decisions and orders with respect to the sentence, the confinement of the accused, and further disposition of the case. The action will be signed personally by the CA, and the CA's authority to sign will appear below his or her signature. The action taken with respect to the sentence is a matter falling within the CA's sole discretion. The CA may for any reason or no reason

STAFF JUDGE ADVOCATE'S RECOMMENDATION

9 July 19CY

From: Staff Judge Advocate, U.S. Naval Support Activity, Naples, Italy

To: Commanding officer, U.S. Naval Support Activity, Naples, Italy

Subj: RECOMMENDATION IN THE SPECIAL COURT-MARTIAL CASE OF STOREKEEPER
SECOND CLASS VERY C. PISTOL, USN, 222-22-2222

Ref: (a) R.C.M. 1106, MCM, 1984

(b) JAGMAN 0151c

Encl: (1) Record of trial in the case of SK2 Very C. Pistol, USN

1. Pursuant to references (a) and (b), the following information is provided:

a. Offenses, pleas, and findings:

Charges and specifications	Pleas	Findings
Charge I: Violation of Article 115, UCMJ	Guilty	Guilty
Specification: On or about 2 Dec 19CY during a time of war, feign a mental derangement.	Guilty	Guilty
Charge II: Violation of Article 134, UCMJ	Guilty	Guilty
Specification: On or about 2 Dec 19CY wrongfully communicate a threat.	Guilty	Guilty

b. Sentence adjudged: On 18 June 19CY, the accused was sentenced to reduction to grade of E-2, confinement for a period of 120 days, forfeiture of \$300.00 pay per month for 5 months, and to be discharged from the naval service with a bad-conduct discharge.

c. Clemency recommendation by court or military judge: None

d. Summary of accused's service record:

(1) Length of service: 15 years, 7 months.

(2) Character of service: 3.7 average of evaluation traits.

(3) Awards and decorations: The accused is entitled to an Overseas Service Ribbon.

(4) Records of prior nonjudicial punishment: CO's NJP on 2 January 19CY(-1) for a violation of Article 108, UCMJ, for destruction of military property and violation of Article 111, UCMJ, for driving while under the influence of alcohol, Awarded 30 days' restriction, 30 days' extra duty, and forfeiture of \$100.00 pay per month for 2 months.

Figure 8-3.-Staff Judge advocate's recommendation.

(5) Record of previous convictions: Conviction by special court-martial on 11 February 19CY(- 1) for a violation of Article 121, UCMJ, larceny of a private vehicle, for which a sentence of reduction from paygrade E-7 to E-5 and confinement for 3 months was finally approved.

(6) Other matters of significance: SK2 Pistol is 35 years old, married, and has four dependents. The accused has been in the Navy for over 15 years, having enlisted in the Navy on 28 December 19CY(-15) for a period of 4 years. SK2 Pistol's GCT is 47 and his ARI is 20. SK2 Pistol's educational background indicates that he completed the 10th grade and later obtained his GED.

e. Nature and duration of pretrial restraint: The accused was in pretrial confinement from 23 May to 18 June 19CY, a period of 25 days. In accordance with the decision rendered in United States v. Allen, 17 M.J. 126, the accused will be credited with 25 days of confinement against the sentence to confinement adjudged.

f. Judicially ordered credit to be applied to confinement, if any: None.

g. Terms and conditions of pretrial agreement, if any, that the convening authority is obligated to honor or reasons why the convening authority is not obligated to take specific action under the agreement: A pretrial agreement was submitted in this case and approved on 16 June 19CY. In return for the accused's provident guilty plea to all charges and specifications, the terms of this agreement called for a limitation on punishment as follows:

Confinement:	If adjudged, confinement in excess of 90 days will be disapproved.
Forfeitures:	If adjudged, forfeitures in excess of \$200.00 pay per month for a period of 4 months will be disapproved.
Fine:	As adjudged.
Reduction:	As adjudged.
Punitive discharge:	As adjudged.

Your obligation concerning the terms of the pretrial agreement in this case are as follows: Since the confinement awarded exceeds that provided for in the pretrial agreement, you are obligated to disapprove that portion that exceeds 90 days. The forfeiture awarded also exceeds the provisions of the pretrial agreement. In accordance with that agreement you may only approve forfeitures of \$200.00 pay per month for 3 months. The reduction to the grade of E-2 and the bad-conduct discharge may be approved as adjudged.

The 25 days of administrative credit to be awarded in accordance with United States v. Allen, will be administered by the confinement facility and should not be addressed in your convening authority's action.

h. The record of trial was served on the accused on 28 Jun CY. On behalf of the accused, the detailed defense counsel, LT Floss A. Brush, JAGC, USNR, has submitted a request for clemency in the form of reduction in the forfeitures to be approved.

2. In my opinion, the court was properly constituted and had jurisdiction over the accused and the offense. The accused was found guilty in accordance with his pleas. The proceedings were conducted in substantial compliance with current regulation and policy. The offenses of which the accused was found guilty are described as offenses under the UCMJ. There is no error noted nor any issues of error raised by the accused or his counsel. The sentence as adjudged is legal and appropriate.

3. I recommend that the sentence as adjudged be approved in accordance with the terms of the pretrial agreement. I further recommend that SK2 Pistol be reduced to the grade of paygrade E-1 as authorized by Article 58a(a) of the Uniform Code of Military Justice.

ABLE B. SEAMAN

Figure 8-3.-Staff judge advocate's recommendation—Continued.

disapprove a legal sentence in whole or in part. He or she can also mitigate it, suspend it, or change a punishment to one of a different nature as long as the severity of the sentence is not increased. His or her decision is a matter of command prerogative and is made in the interests of justice, discipline, mission requirements, clemency, and other appropriate reasons.

In taking his or her action, the CA is required to consider the results of trial, the SJA's and/or the LO's recommendation when required, and any matters submitted by the accused. Additionally, the CA may consider the record of trial, personnel records of the accused, and such other matters deemed appropriate by

the CA. In matters considered outside of the record, of which the accused is not reasonably aware, the matters should be disclosed to the accused to provide an opportunity for his or her rebuttal.

The CA will not take action approving or disapproving a finding of not guilty, a finding of not guilty only by reason of lack of mental responsibility, or a ruling amounting to a finding of not guilty.

Appendix 16, *Manual for Courts-Martial* (MCM), 1984, contains sample forms of action for an SCM, an SPCM, and a GCM. One or more of these forms are appropriate to implement the decisions of the CA in virtually every case. Deviation from these forms is risky

9 July 19CY

From: Staff Judge Advocate, U.S. Naval Support Activity, Naples, Italy
To: LT Floss A. Brush, JAGC, USNR, Naval Legal Service Office, Naples, Italy
Subj: RECOMMENDATION IN THE SPECIAL COURT-MARTIAL CASE OF
STOREKEEPER SECOND CLASS VERY C. PISTOL, USN, 222-22-2222
Ref: (a) Article 64, UCMJ
(b) R.C.M. 1106(f)(1)
Encl: (1) Copy of staff judge advocate's recommendation in the case of SK2 Very C. Pistol,
USN
(2) Acknowledgement receipt

1. Pursuant to reference (a), a review of the court-martial of SK2 Pistol has been conducted. Enclosure (1) is a copy of this review.

2. Pursuant to rules established by reference (b), you are hereby served with a copy of this review to afford you an opportunity to correct or challenge any matter therein that you may deem erroneous, inadequate, or misleading, or upon which you may otherwise wish to comment. Proof of service of this review upon you, together with any such correction, challenge, or comment you may make, shall be made a part of the record of proceedings.

3. You are advised that your failure to take advantage of the aforementioned opportunity within 10 calendar days from the date of this service will normally be deemed a waiver of any error in the review.

4. You are requested to acknowledge receipt of this letter, with attached copy of review, by immediately completing enclosure (2).

ABLE B. SEAMAN

Figure 8-4. Memorandum forwarding staff judge advocate's recommendation to detailed defense counsel.

10 July 19CY

From: LT Floss A. Brush, JAGC, USNR, Naval Legal Service Office, Naples, Italy

To: Staff Judge Advocate, U.S. Naval Support Activity, Naples, Italy

Subj: RECOMMENDATION IN THE SPECIAL COURT-MARTIAL CASE OF STOREKEEPER
SECOND CLASS VERY C. PISTOL, USN, 222-22-2222

1. I, the undersigned, counsel for the accused in the above-captioned proceedings, hereby acknowledge receipt of the aforementioned staff judge advocate's review required by Article 64, UCMJ, for the subject case on this 10th day of July 19CY.

FLOSS A. BRUSH

Figure 8-5. Defense counsel's acknowledgement of receipt of staff judge advocate's recommendation.

DEPARTMENT OF THE NAVY
Naval Legal Service Office
Naples, Italy
FPO AE 09619-1000

17 July 19CY

From: LT Floss A. Brush, JAGC, USNR, Naval Legal Service Office, Naples, Italy

To: Staff Judge Advocate, U.S. Naval Support Activity, Naples, Italy

Subj: RECOMMENDATION IN THE SPECIAL COURT-MARTIAL CASE OF STOREKEEPER
SECOND CLASS VERY C. PISTOL, USN, 222-22-2222

Ref: (a) Staff judge advocate's recommendation in the case of SK2 Pistol, USN
(b) R.C.M. 1106(f)(4)

Encl: (1) Mrs. Jane A. Pistol's ltr of 30 Jun CY

1. Reference (a) was received by me on 3 July 19CY and has been reviewed pursuant to reference (b).
2. I do not desire to submit a correction, challenge, or comment to the attached review,
3. I have attached a letter from the accused's wife for the convening authority's consideration,

FLOSS A. BRUSH

Figure 8-6. Detailed defense counsel's response to staff judge advocate's recommendation.

and usually leads to trouble unless the drafter is experienced.

The CA may recall and modify any action taken by him or her at any time before it has been published or before the accused has been officially notified. In addition, in any SPCM not involving a BCD or an SCM, the CA may recall and correct an illegal, erroneous, incomplete, or ambiguous action at any time before completion of review by a judge advocate, as long as the correction does not result in action less favorable to the accused than the earlier action. The CA must personally sign any supplementary or corrective action.

If any findings of guilty are disapproved, the action must state that. If a rehearing is not ordered, the affected charges and specifications will be dismissed by the CA in the action. If a rehearing or other trial is directed, the reasons for the disapproval of the findings will be set forth in the action.

The action will state whether the sentence adjudged by the court-martial is approved. If only part of the sentence is approved, the action will state which parts are approved. A rehearing may not be directed if any portion of the sentence is approved. The action will indicate, when appropriate, whether an approved sentence is to be executed or whether the execution of all or any part of the sentence is to be suspended. No reasons need to be stated. If the CA orders a sentence of confinement into execution, the CA will designate the place of confinement in the action. If a sentence of confinement is ordered into execution after the initial action of the CA, the authority ordering the execution will designate the place of confinement.

When a record of trial involves an approved sentence to death, the CA will, unless any approved sentence of confinement has been ordered into execution and a place of confinement designated, provide in the action for the temporary custody of the accused pending final disposition of the case on appellate review.

Whenever the service of the sentence to confinement is deferred by the CA before or concurrently with the initial action in the case, the action will include the date on which the deferment became effective. The reason for the deferment does not have to be stated in the action.

When the military judge directs that the accused receive credit for illegal pretrial confinement, the CA will so direct the credit in his or her action.

The CA will include in the action any reprimand that the CA has ordered executed.

If the accused was awarded a punitive discharge or confinement in excess of 90 days (awarded in days) or 3 months (awarded in months), the CA's action must address the issue of automatic administrative reduction. In his or her sole discretion, the CA may remit the automatic reduction, or he or she may retain the accused in the paygrade held at the time of sentence or in an intermediate paygrade and suspend the automatic reduction to paygrade E-1 that would otherwise be effected under Article 58a(a), *Uniform Code of Military Justice* (UCMJ). Additionally, the CA may direct that the accused serve in paygrade E-1 while in confinement but be returned to the paygrade held at the time of sentence or an intermediate paygrade upon release from confinement. Failure of the CA to address automatic reduction will result in the automatic reduction to paygrade E-1 on the date of the CA's action.

Figures 8-7, 8-8, 8-9, and 8-10 show examples of the CA's action. Figure 8-7 illustrates approval of part of the sentence and partial order of execution of the sentence awarded at trial. Figure 8-8 illustrates a CA's action on an acquittal. Figure 8-9 shows an example of a CA's action when the sentence adjudged by the court is approved by the CA and all but the BCD is ordered executed. Figure 8-10 illustrates a CA's action wherein the sentence awarded at trial is approved and ordered executed. These are the most common forms of the CA's action. However, as stated earlier, appendix 16, MCM, contains sample forms for action and should be referred to when drafting the action of the CA.

After taking action, the CA will publish the results of the trial and the CA's action in a legal document called a promulgating order.

Promulgating Orders

Orders that promulgate the result of trial and the actions of the CA or higher authorities on the record are called promulgating orders. Promulgating orders are used as a method of recordkeeping and informing all those officials interested in the progress of the case. They are prepared, issued, and distributed in all GCM and SPCM cases regardless of action by the CA or higher authorities. Promulgating orders are not required for SCMs. The order is issued by the CA. As required by JAG/COMNAVLEGSVCCOMINST 5814.1, use the promulgating order checklist to assist in the preparation of the promulgating order and attach this checklist to the original record of trial. The form of the

DEPARTMENT OF THE NAVY
U.S. NAVAL SUPPORT ACTIVITY, NAPLES, ITALY
FPO AE 09619-1000

18 July 19CY

In that case of Storekeeper Second Class Very C. Pistol, 222-22-2222, U.S. Navy, only so much of the sentence as provides for forfeiture of \$200.00 pay per month for 4 months, confinement for a period of 90 days, and discharge from the naval service with a bad-conduct discharge is approved and, except for the part of the sentence extending to a bad-conduct discharge, will be executed. The Navy Brig, Naval Station, Rota, Spain, is designated as the place of confinement.

In accordance with Article 58a(a), UCMJ, and JAGMAN, Section 0152d, automatic reduction in rate to paygrade E-1 is effected as of the date of this action.

The accused is entitled to wear the Overseas Service Ribbon.

The record of trial is forwarded to the Navy-Marine Corps Court of Military Review, for review under Article 66, UCMJ.

PAUL T. BOAT
Captain, U.S. Navy
Commanding Officer
U.S. Naval Support Activity
Naples, Italy

CONVENING AUTHORITY'S ACTION - THIS EXAMPLE SHOWS APPROVAL OF PART OF THE SENTENCE AND PARTIAL ORDER OF EXECUTION OF THE SENTENCE AWARDED AT TRIAL. THE CA ONLY APPROVED PART OF THE SENTENCE ADJUDGED BY THE COURT. THE COURT SENTENCED THE ACCUSED TO REDUCTION TO E-2, CONFINEMENT FOR A PERIOD OF 120 DAYS, FORFEITURE OF \$300.00 PAY PER MONTH FOR 5 MONTHS, AND A BAD-CONDUCT DISCHARGE. THE CA APPROVED THE REDUCTION TO E-2 AND THE BAD-CONDUCT DISCHARGE, BUT APPROVED ONLY 90 DAYS OF CONFINEMENT AND FORFEITURES OF ONLY \$200.00 PAY PER MONTH FOR 3 MONTHS.

THE PROVISION OF ARTICLE 58a(a), AUTOMATIC REDUCTION, IS INCLUDED IN THIS CASE ONLY BECAUSE THE REDUCTION AWARDED BY THE COURT WAS FROM E-5 TO E-2. HAD THE COURT REDUCED THE ACCUSED TO E-1, AND THAT PORTION OF THE SENTENCE BEEN APPROVED AND ORDERED EXECUTED, ARTICLE 58a(a) WOULD NO LONGER HAVE BEEN APPLICABLE.

Figure 8-7.-CA's action. Approval of part of the sentence and partial order of execution of the sentence awarded at trial.

DEPARTMENT OF THE NAVY
U.S. NAVAL SUPPORT ACTIVITY, NAPLES, ITALY
FPO AE 09619-1000

17 July 19CY

In that case of Electrician's Mate Fireman John A. Doe, 123-45-6789, U.S. Navy, tried by special court-martial on 1 July 19CY, the court had jurisdiction over the accused and the offense(s) for which he was tried and the court was properly convened and constituted.

PAUL T. BOAT
Captain, U.S. Navy
Commanding Officer
U.S. Naval Support Activity
Naples, Italy

Figure 8-8.-CA's action. Acquittal record of trial.

DEPARTMENT OF THE NAVY
U.S. NAVAL SUPPORT ACTIVITY, NAPLES, ITALY
FPO AE 09619-1000

14 April 19CY

In that case of Seaman Mary Christmas, 333-33-3333, U.S. Navy, the sentence is approved and, except for the part of the sentence extending to a bad-conduct discharge, will be executed. The Navy Brig, Naval Station, Rota, Spain, is designated as the place of confinement.

In accordance with Article 58a(a), UCMJ, and JAG MAN, Section 0152d, automatic reduction in rate to paygrade E-1 is effected as of the date of this action.

The accused is entitled to wear the Overseas Service Ribbon.

The record of trial is forwarded to the Navy-Marine Corps Court of Military Review, for review under Article 66, UCMJ.

PAUL T. BOAT
Captain, U.S. Navy
Commanding Officer
U.S. Naval Support Activity
Naples, Italy

Figure 8-9.-CA's action. Sentence adjudged by court approved by the CA and all but the BCD ordered executed.

DEPARTMENT OF THE NAVY
U.S. NAVAL SUPPORT ACTIVITY, NAPLES, ITALY
FPO AE 09619-1000

17 July 19CY

In that case of Personnelman Third Class Jack R. Frost, 111-11-1111, U.S. Navy, the sentence is approved and will be executed. The Navy Brig, Naval Station, Rota, Spain, is designated as the place of confinement.

In accordance with Article 58a(a), UCMJ, and JAGMAN, Section 0152d, automatic reduction in rate to paygrade E-1 is effected as of the date of this action.

The record of trial is forwarded to Commander, Fleet Air Mediterranean, for review under Article 64(a), UCMJ.

PAUL T. BOAT
Captain, U.S. Navy
Commanding Officer
U.S. Naval Support Activity
Naples, Italy

In this sample the sentence does not include a punitive discharge, death, or dismissal, and the paragraph pertaining to automatic reduction should be included only if the sentence awarded and approved contained confinement in excess of 90 days/3 months.

Figure 8-10.-CA's action. Sentence awarded at trial approved and ordered executed.

initial promulgating order is set forth in appendix 17, MCM, and illustrated in figure 8-11.

The order will set forth the following:

- The type of court-martial and the command by which it was convened
- The charges and specifications, or a summary thereof, on which the accused was arraigned
- The accused's pleas
- The findings or other disposition of each charge and specification
- The sentence, if any
- The action of the CA or a summary thereof

A promulgating order will bear the date of the initial action, if any, of the CA. An order promulgating an acquittal, a court-martial terminated before findings, a court-martial resulting in a finding of not guilty only by reason of lack of mental responsibility of all charges and specifications, or action on the findings or sentence

taken after the initial action of the CA will bear the date of its publication.

The promulgating order will state the date the sentence was adjudged, the date the acquittal was adjudged, or the date the proceedings were otherwise terminated.

All initial and supplemental promulgating orders will be distributed as follows:

- Original to be attached to the original record of trial.
- Duplicate original to be placed in the service record of the accused, unless the court-martial proceedings resulted in acquittal of all charges, disapproval of all findings of guilty, or disapproval of the sentence by the CA when no findings have been expressly approved. Send this copy to the personnel support activity detachment maintaining the accused's service record.
- Duplicate originals or certified copies:

DEPARTMENT OF THE NAVY
U.S. Naval Support Activity
Naples, Italy
FPO AE 09619-1000

17 July 19CY

Special Court-Martial Order No. 7-CY

Storekeeper Second Class Very C. Pistol, U.S. Navy, U.S. Naval Support Activity, Naples, Italy, was arraigned at Naval Legal Service Office, Naples, Italy, on the following offenses at a court-martial convened by this command.

CHARGE I: ARTICLE 115. Plea: G. Finding: G.

Specification: On or about 2 December 19CY during a time of war, feign a mental derangement. Plea: G. Finding: G.

CHARGE II: ARTICLE 134. Plea: G. Finding: G.

Specification: On or about 2 December 19CY wrongfully communicate a threat. Plea: G. Finding: G.

SENTENCE

Sentence adjudged on 18 June 19CY: To be reduced to the paygrade of E-2, to be confined for a period of 120 days, to forfeit \$300.00 pay per month for 5 months, and to be discharged from the naval service with a bad-conduct discharge.

ACTION

DEPARTMENT OF THE NAVY
U.S. NAVAL SUPPORT ACTIVITY, NAPLES, ITALY
FPO AE 09619-1000

17 July 19CY

In that case of Storekeeper Second Class Very C. Pistol, 222-22-2222, U.S. Navy, only so much of the sentence as provides for forfeiture of \$200.00 pay per month for 4 months, confinement for a period of 90 days, and discharge from the naval service with a bad-conduct discharge is approved and, except for the part of the sentence extending to a bad-conduct discharge, will be executed. The Navy Brig, Naval Station, Rota, Spain, is designated as the place of confinement.

In accordance with Article 58a(a), UCMJ and JAGMAN, Section 0152d, automatic reduction in rate to paygrade E-1 is effected as of the date of this action.

The accused is entitled to wear the Overseas Service Ribbon.

The record of trial is forwarded to the Navy-Marine Corps Court of Military Review for review under Article 66, UCMJ.

/s/ PAUL T. BOAT
PAUL T. BOAT
Captain, U.S. Navy
Commanding Officer
U.S. Naval Support Activity
Naples, Italy

ABLE B. SEAMAN
Lieutenant, JAGC, USNR
Staff Judge Advocate
U.S. Naval Support Activity
Naples, Italy

Figure 8-11.—Promulgating order.

Distribution:

Original - Original ROT

Duplicate Original - Accused's SRB

Certified Copies - 3 to original ROT

1 to each copy of ROT

1 to CO, NAVSUPPACT NAPLES

1 to COMFAIRMED

1 to BUPERS (PERS-83)

2 to NAVBRIG, Rota, Spain

Plain Copies -1 to accused

1 to NAVLEGSVCOFF Naples, Italy

1 to MJ

1 to TC

1 to DC

1 to CO, NAVSUPPACT, Naples, Italy

1 to OIC, PERSUPPDET, Rota, Spain

Figure 8-11.—Promulgating order—Continued.

a. Three copies to be attached to the original record of trial. (Only one need be attached in those SPCMs in which the approved sentence does not include an unsuspended or suspended BCD.)

b. One copy to be attached to each copy of the record of trial.

c. Two copies to the CO of the accused if a brig or confinement facility is designated as the place of confinement; three copies if a disciplinary command is designated as the place of confinement. These copies should accompany the records of the accused to the place of confinement.

d. One copy to Commander, Bureau of Naval Personnel (PERS-06 in the case of officers, PERS-83 in the case of enlisted).

e. One copy to the OEGCMJ over the accused at the time of trial, and one to the current OEGCMJ over the accused (if different). The OEGCMJ will be identified by the command name.

f. One copy to the type commander of the accused at the time of trial. The type commander will be identified by the command name.

- Duplicate originals, certified copies, or plain copies:

a. One copy to the accused.

b. One copy to the CO of the naval legal service office (NLSO) where the accused was tried.

c. One copy each to the military judge, the TC, and the DC of the court-martial.

d. One copy to the CA and, if the accused was serving in a command other than that of the CA at the time of the alleged offense, one to the command in which he or she was then serving.

e. One copy to each appropriate subordinate unit and any other local distribution desired.

f. In addition to the distribution requirements stated previously, make sure the following distribution is made when the accused is a Navy officer:

(1) Copy to Officer in Charge, Personnel Support Activity Detachment, Building 29, Offutt AFB, Omaha, Nebraska 68113, if the U.S. Disciplinary Barracks, Fort Leavenworth, Kansas, is designated as the place of confinement.

(2) Copy to the Defense Finance Accounting Service (DFAS), Special Claims Department (Code 4311), Cleveland Center, Cleveland, Ohio 44199-2058, if the sentence includes forfeiture of pay that has been approved by the CA.

Supplemental Actions and Supplemental Promulgating Orders

Action on the case occurring after the initial promulgating order has been published will be taken by issuing a supplemental action and a supplemental promulgating order. Appendix 17, MCM, 1984, provides the necessary forms.

Posttrial Service Record Entries

When an enlisted member is tried and convicted by court-martial, and a guilty finding is approved by the CA, entries in the member's service record must be made setting forth the details of the trial.

When you are trying to determine which service record entries are required to properly document the results of trial, there are several things to consider.

There are several types of punishment that the court could adjudge. Some of these punishments will affect the accused's pay and some will not.

The types of punishment that affect an accused's pay are (1) reduction in rate; (2) forfeiture of pay; and (3) fine.

The types of punishment that do not affect the accused's pay are (1) confinement; (2) hard labor without confinement; (3) restriction; (4) admonition or reprimand; and (5) punitive discharge (DD or BCD).

You must also realize that even though the CA has approved a sentence, or any part of a sentence, he or she may still desire to suspend that sentence or any portion of that sentence. If the CA does suspend a sentence, or any portion thereof, it may have a bearing on the type of service record entries you will be required to make.

Notice that the service record pages that are required are pages 4, 7, 9, and 13. However, not all these pages will be used in every case. You will have to determine when any particular entry is required based upon the facts of the case.

You have already learned the basic preparation requirements for these service record pages in chapter 6. The only difference now is you will prepare them for approved court-martial sentences vice NJP results. A

few general rules apply for the preparation of these documents.

Page 4 entries

1. If the sentence, as approved and ordered executed by the CA, includes a reduction in rate, you will prepare a page 4 entry.

2. If the sentence includes a reduction in rate that has been approved, but, instead of being ordered executed, has been suspended for a specified period of time by the CA, then you will not prepare a page 4 entry at this time.

3. If the reduction in rate has been suspended by the CA for a specified period of time, and during that period of time the accused violates the terms of the suspension, the CA will most likely order the suspended reduction in rate be executed. This is known as vacating a suspended sentence. When this happens, you will prepare a page 4 entry. The effective date and the time in rate date would be the date that the CA ordered the suspended reduction in rate vacated. A sample of a completed page 4 is shown in figure 8-12.

Page 9 entries

You will always be required to make a page 9 entry to document that an accused has been to a court-martial if that court-martial resulted in a conviction. General rules for entries on page 9 include the following:

1. Block 2—Reason: If the accused was reduced in rate, you will type the letter abbreviation of the type of court-martial followed by a slash and then type RR.

2. Block 4—Traits: Always refer to all service record pages where an entry was made to reflect an approved sentence.

Figure 8-13 illustrates three examples of how to annotate a page 9. You would use the first sample if the sentence, as approved by the CA, did not include confinement and did not affect the accused's pay—in other words, there was no reduction in rate, no forfeiture of pay, no fine, and no confinement. You will use the second sample if the sentence, as approved by the CA, did include confinement and/or did affect the accused's pay, but did not include a reduction in rate. Use the third type of sample when the sentence as approved by the CA includes a reduction in rate. As the samples show, the choices of possible page 9 entries would be the same for an SCM or a GCM.

6. PERSONNEL ADVANCEMENT REQUIREMENT			7. PERFORMANCE TESTS			8. ADVANCEMENT, REDUCTION OR CHANGE IN RATING				
DESCRIPTION	DATE COMPLETED	*OFF. INIT.	DESCRIPTION	DATE COMPLETED	*OFF. INIT.	RATE ADVANCED, REDUCED OR CHANGED	EFFECTIVE	TIME IN RATE COMPUTED FROM	*OFF. INIT.	
						SK1	SKC	16AUGCY-2	16AUGCY-2	<i>[Handwritten signature]</i>
						SKC	SK2	11FEBCY-1	11FEBCY-1	
						SK2	SKSR	16JULCY	16JULCY	

9. RECORD OF OFF-DUTY EDUCATION AND VOC/TECH TRAINING									
DATE COMPLETED	NUMBER AND TITLE OF COURSE OR TEST	SCHOOL	GRADE	*OFF. INIT.	DATE COMPLETED	NUMBER AND TITLE OF COURSE OR TEST	SCHOOL	GRADE	*OFF. INIT.

10. GOOD CONDUCT AWARDS			11. DECORATIONS, UNIT, AND MARKSMANSHIP AWARDS			
AWARD NUMBER	DATE EARNED	*OFF. INIT.	AWARD	ACTIVITY	DATE OF AWARD	*OFF. INIT.

12. CAMPAIGN/SERVICE AND OTHER AWARDS					
AWARD	ENGAGEMENT(S)	*OFF. INIT.	AWARD	ENGAGEMENT(S)	*OFF. INIT.

13. OTHER TRAINING COURSES/INSTRUCTIONS COMPLETED				
DATE COMPLETED	TYPE OF COURSE AND/OR INSTRUCTION	DURATION	LOCATION	*OFF. INIT.

PISTOL, VERY C.

Figure 8-12.-Navy Occupational/Training and Awards History, NAVPERS 1070/604.

ENLISTED PERFORMANCE RECORD										
1. PERIOD OF REPORT	2. REASON	3. RATE	4. TRAITS						5. SHIP OR STATION	6. INITIALS
			Rate Knowledge	Reliability	Military Bearing	Personal Behavior	Directing	Overall Evaluation		
CY-2OCT14		SR	DATE OF ENLISTMENT						NAVCROIDIST CLEVELAND, OH	JER
CY-1FEB16	AR	SA	ADVANCED TO SA						SSC, NTC GREAT LAKES, IL	DSC
CY-1APR30	CR	BTFA	CHANGED RATE TO BTFA						SSC, NTC GREAT LAKES, IL	DSC
CY-1APR30	T	BTFA	3.6	3.6	3.6	3.6	3.6	3.6	SSC, NTC GREAT LAKES, IL	DSC
CY-1AUG16	AR	BTFN	ADVANCED TO BTFN						USS HERMITAGE (LSD 34)	CES
CYJAN21	SCM	BTFN	SUMMARY COURT-MARTIAL (NAVPERS 1070/613)						USS HERMITAGE (LSD 34)	CES
CYJAN12	SCM	BTFN	SUMMARY COURT-MARTIAL (NAVPERS 1070/607)						USS HERMITAGE (LSD 34)	CES
CYJAN10	SCM/RR	BTFR	SUMMARY COURT-MARTIAL (NAVPERS 1070/604/607)						USS HERMITAGE (LSD 34)	CES
EX 1 CYJAN30	SPCM	BTFN	SPECIAL COURT-MARTIAL (NAVPERS 1070/613)						USS HERMITAGE (LSD 34)	CES
EX 2 CYJAN15	SPCM	BTFN	SPECIAL COURT-MARTIAL (NAVPERS 1070/607)						USS HERMITAGE (LSD 34)	CES
EX 3 CYJAN22	SPCM/RR	BTFR	SPECIAL COURT-MARTIAL (NAVPERS 1070/604/607)						USS HERMITAGE (LSD 34)	CES
CYJAN05	GCM	BTFN	GENERAL COURT-MARTIAL (NAVPERS 1070/613)						USS HERMITAGE (LSD 34)	CES
CYFEB14	GCM	BTFN	GENERAL COURT-MARTIAL (NAVPERS 1070/607)						USS HERMITAGE (LSD 34)	CES
CYFEB10	GCM/RR	BTFR	GENERAL COURT-MARTIAL (NAVPERS 1070/604/607)						USS HERMITAGE (LSD 34)	CES
NAME (Last)			(First)		(Middle)			SSN		BRANCH/CLASS
DOE			JOHN		A .			123-45-6789		USN

NAVPERS 1070/606 (REV 3-83)

S/N 0106-LF-010-6671

★ U.S. Government Printing Office: 1994-608-012/17985 2-1

90

Figure 8-13.—Enlisted Performance Record, NAVPERS 1070/609.

Page 13 entries

You will be required to make a page 13 entry, similar to that shown in figure 8-14, in all cases resulting in a conviction where the sentence fits into one of the following categories:

- The sentence, as approved by the CA, was no punishment.
- The sentence, as approved and ordered executed by the CA, did not include confinement and did not affect the accused's pay (no reduction in rate, no forfeiture of pay, no fine).
- The sentence was such that it would normally require a page 7 entry (confinement, reduction in rate, forfeiture of pay, or fine), but the CA has suspended all portions of the sentence that would normally require you to prepare a page 7 entry. As long as no part of the sentence "ordered executed" includes confinement, reduction in rate, forfeiture of pay, or fine, then you would prepare a page 13 entry.

Page 7 entries

You will be required to prepare a page 7 entry in all cases where the sentence, as approved and ordered executed by the CA, includes confinement, reduction in rate, forfeiture of pay, or fine.

Remember, if all the previous types of punishment have been suspended by the CA, then you will not prepare a page 7 entry, but instead you will prepare a page 13 entry. However, if any one portion of the previously mentioned types of punishment has been approved and not suspended then you must prepare a page 7 entry. The key to remember is that you will be required to prepare either a page 7 entry or a page 13 entry to reflect the result of trial, but not both.

Figure 8-15 shows an example of a completed page 7 reflecting the CA's action that approved and ordered executed the sentence awarded at trial. Figure 8-16 is a sample page 7 reflecting the CA's action that approves and orders executed the sentence awarded at trial with the exception of the BCD. Figure 8-17 illustrates a page 7 reflecting the CA's action in which the CA only partially approved the sentence and ordered it executed.

WAIVER OR WITHDRAWAL OF APPELLATE REVIEW

After any GCM, except one in which the approved sentence includes death, and after any SPCM in which

the approved sentence includes a BCD, the accused may waive or withdraw appellate review. Appellate review is not available for SPCMs in which a BCD was not adjudged or approved and for SCMs. Cases not subject to appellate review, or in which appellate review is waived, are reviewed by a judge advocate only. Such cases may also be submitted to the Judge Advocate General (JAG) for review.

The accused has the right to consult with counsel before submitting a waiver or withdrawal of appellate review. The waiver or withdrawal must be a written document. The waiver must establish that the accused and the DC have discussed (1) the accused's right to appellate review; (2) the effect that the waiver or withdrawal will have on the review; (3) that the accused understands these matters; and (4) that the waiver or withdrawal is submitted voluntarily. A waiver or withdrawal must be signed by the accused and the DC.

A waiver of appellate review is filed with the CA and is attached to the record of trial. A withdrawal of appellate review is filed with the OEGCMJ over the accused who sends it to JAG.

The accused may file a waiver of appellate review within 10 days after the accused or DC is served with a copy of the CA's action. Upon written application of the accused, the CA may extend this period for good cause for not more than 30 days. A withdrawal may be submitted any time before appellate review is completed. In either case, however, once appellate review is waived or withdrawn, it is irrevocable and the case will thereafter be reviewed locally in the same manner as an SCM or an SPCM not involving a BCD.

Figure 8-18 is the form to be used when an accused wishes to waive or withdraw his or her right to appellate review in a GCM or an SPCM subject to review by a Court of Military Review. Figure 8-19 should be used for those members who desire to waive their rights to appellate review in GCM cases subject to examination in the Office of the Judge Advocate General.

APPELLATE LEAVE

Under the provisions of Article 76(a), UCMJ, the Secretary of the Navy (SECNAV) may prescribe regulations that require officers and enlisted members to take leave pending completion of the appellate review process if the sentence, as approved by the CA, includes an unsuspended dismissal or an unsuspended dishonorable discharge (DD) or BCD. The regulations on appellate leave are contained in the *Naval Military Personnel Manual* (MILPERSMAN). Stated very

ADMINISTRATIVE REMARKS
NAVPERS 1070/613 (REV. 10-81)
S/N 0106-LF-010-8981

E-32

SHIP OR STATION
USS HERMITAGE (LSD 34)

03 Feb CY: SPECIAL COURT-MARTIAL

DATE OF OFFENSE: 23 September 19CY-1
NATURE OF OFFENSE: Violation of UCMJ, Article 86 - Unauthorized
Absence from 23 September 19CY-1 to 7 January
19CY.
DATE OF TRIAL: 10 January 19CY
FINDINGS: Of the Charge and Specification thereunder:
Guilty.
SENTENCE ADJUDGED: To be restricted to the limits of USS HERMITAGE
(LSD 34) for a period of 45 days.
CA'S ACTION ON SENTENCE: Approved and ordered executed. The record of
trial is forwarded to Commander, Amphibious
Group TWO, Norfolk, VA, for review in
accordance with Article 64(b), UCMJ.

PAUL T. BOAT, LNC, USN
By direction of the Commanding Officer

Note: This is a sample page 13 entry that would be used when the sentence, as approved and ordered executed by the CA, does not include confinement and/or any type of punishment that affects the accused's pay.

The sample type of entry would also be used when an accused is tried and convicted at a court-martial (SCM, SPCM, or GCM) and receives a sentence of no punishment. The only difference would be the sentence adjudged entry would read "No punishment."

This is also the type of entry you would make when the sentence as approved and ordered executed by the CA includes punishment that normally requires a page 7 entry but the CA ordered that portion suspended.

When a person is acquitted at a court-martial there are no service record entries made at all to reflect the results of trial.

NAME (Last, First, Middle)
DOE, JOHN A.

SSN
111-11-1111

BRANCH AND CLASS
USN

13 ☐

Figure 8-14.—Administrative Remarks, NAVPERS 1070/613.

BUPERS USE ONLY		P601-7R		BUPERS USE ONLY	
COURT MEMORANDUM					
38					

1. DATE SUBMITTED CYMAR22		2. SHIP OR STATION AND LOCATION USS HERMITAGE (LSD 34)			
3. DATE OF REFERRAL CYFEB16		4. TYPE OF COURT SPECIAL		5. DATE OF COURT/MAST CYFEB28	
6. UCMJ ARTICLE(S) 128, 134					
7. DATE OF ACTION CYMAR20		8. REPORT OF ACTION <input checked="" type="checkbox"/> X		9. MODIFICATION OF ACTION <input type="checkbox"/>	
10. CORRECTION TO PREVIOUS 1070/607		11. DATE OF SUBMISSION ON 1070/607 MOD. OR CORRECTED			
12. RATE ADJUSTMENT <input checked="" type="checkbox"/> X		13. FROM YN2		14. TO YNSN	
15. TIR CYMAR20					
16. FORFEITURE <input checked="" type="checkbox"/> X		17. MONTHLY AMT. \$ 250.00		18. NO. MONTHS 4	
19. FINE <input type="checkbox"/>		20. AMOUNT \$		21. CONSENT TO CHECKAGE <input type="checkbox"/>	
22. DOES NOT CONSENT TO CHECKAGE <input type="checkbox"/>		23. MO. AMT. OF CHECKAGE \$		24. NO. MOS.	
25. DETENTION <input type="checkbox"/>		26. MONTHLY AMT. \$		27. NO. MONTHS	
28. DETENTION RE-FUND DATE					
29. DESERTION MARK REMOVED <input type="checkbox"/>		30. ADJUDGED <input type="checkbox"/>		31. ADJUDGED AND DIS-APPROVED <input type="checkbox"/>	
32. PRE TRIAL CONFINEMENT FROM		33. TO		34. DAYS LOST TIME (30 DAY BASIS)	
35. DAYS LOST TIME (DAY FOR DAY)					
36. CONFINEMENT ORDERED AND COMPLETED FROM		37. TO		38. DAYS LOST TIME (30 DAY BASIS)	
39. DAYS LOST TIME (DAY FOR DAY)					
40. CHANGE EAOS TO		41. CHANGE EXP. ENL. TO			

42. SYNOPSIS OF OFFENSE(S), DATE(S), AND SENTENCE ADJUDGED (ALSO AMPLIFYING REMARKS, MAY BE CONTINUED ON REVERSE)

CYMAR22: SPECIAL COURT-MARTIAL
 DATE OF TRIAL: CYFEB28
 VIOL UCMJ, ART. 128 - ASSAULT ON A PETTY OFFICER BY STRIKING HIM IN THE FACE WITH HIS FIST ON CYFEB10; VIOL UCMJ, ART. 134 - DRUNK AND DISORDERLY CONDUCT ON STATION ON CYFEB10.
 SENTENCE ADJUDGED: REDUCTION TO THE GRADE OF PAYGRADE E-3, FORF OF \$250.00 PAY PER MONTH FOR 4 MONTHS
 DATE SENTENCE ADJUDGED: CYFEB28

DATE IDENTIFICATION AND RESUME OF CONVENING, SUPERVISORY, OR OTHER AUTHORITY INCLUDING ACTION UNDER ARTICLES 65, 66, 67, 69, 72, 73, 74, OR 15 (D) OR (E), UCMJ, (ALSO ANY APPEAL)

43. 1070, 607 DTD CYMAR20		44. AUTHORITY TYPE CONVENING		CO, USS HERMITAGE	
------------------------------	--	---------------------------------	--	-------------------	--

45. (LSD 34) LTR SER 377 DTD CYMAR20 FWD ROT TO COMPHIBGRU TWO

CA'S ACTION: APPROVED AND ORDERED EXECUTED. THE FORF SHALL APPLY TO PAY BECOMING DUE ON OR AFTER THE DATE OF THIS ACTION. ROT FWD TO COMPHIBGRU TWO, NORFOLK, VA FOR REVIEW IAW ART. 64(C), UCMJ.

(MAY BE CONTINUED ON REVERSE)

46. (SIGNATURE) BY DIRECTION PAUL T. BOAT, LNC, USN, BY DIR CO USS HERMITAGE (LSD 34)		GRADE	
47. UNIT I.D. CODE 12345		48. RATE YNSN	
49. NAME (LAST, FIRST, MIDDLE) DOE, JOHN NMN		50. SSN 555-55-5555	
		51. BRANCH CLASS USN	

COURT MEMORANDUM NAVPERS 1070/607 (REV. 12-75) S-N 0106-LF 010-6960
 U.S. GOVERNMENT PRINTING OFFICE: 1986-491-648 T-40037

Figure 8-15.-Court Memorandum, NAVPERS 1070/607—CA's action that approved and ordered executed the sentence awarded at trial.

BUPERS USE ONLY		P601-7R		BUPERS USE ONLY	
COURT MEMORANDUM					
38					
1. DATE SUBMITTED CYMAR22		2. SHIP OR STATION AND LOCATION USS HERMITAGE (LSD 34)			
3. DATE OF REFERRAL CYFEB16		4. TYPE OF COURT SPECIAL		5. DATE OF COURT/MAST CYFEB28	
6. UCMJ ARTICLE(S) 128, 134		7. DATE OF ACTION CYMAR20		8. REPORT OF ACTION <input checked="" type="checkbox"/>	
9. MODIFICATION OF ACTION <input type="checkbox"/>		10. CORRECTION TO PREVIOUS 1070/607 <input type="checkbox"/>		11. DATE OF SUBMISSION ON 1070/607 MOD OR CORRECTED	
12. RATE ADJUSTMENT <input checked="" type="checkbox"/>		13. FROM BT3		14. TO BTFR	
15. TIR CYMAR20		16. FORFEITURE <input checked="" type="checkbox"/>		17. MONTHLY AMT. \$ 300.00	
18. NO. MONTHS 3		19. FINE <input type="checkbox"/>		20. AMOUNT \$	
21. CONSENT TO CHECKAGE <input type="checkbox"/>		22. DOES NOT CONSENT TO CHECKAGE <input type="checkbox"/>		23. MO. AMT. OF CHECKAGE \$	
24. NO. MOS.		25. DETENTION <input type="checkbox"/>		26. MONTHLY AMT. \$	
27. NO. MONTHS		28. DETENTION RE-FUND DATE		29. DESERTION MARK REMOVED <input type="checkbox"/>	
30. ADJUDGED <input type="checkbox"/>		31. ADJUDGED AND DIS-APPROVED <input type="checkbox"/>		32. PRE-TRIAL CONFINEMENT FROM	
33. TO:		34. DAYS LOST TIME (30 DAY BASIS)		35. DAYS LOST TIME (DAY FOR DAY)	
36. CONFINEMENT ORDERED AND COMPLETED FROM CYFEB28		37. TO:		38. DAYS LOST TIME (30 DAY BASIS)	
39. DAYS LOST TIME (DAY FOR DAY)		40. CHANGE EAOS TO:		41. CHANGE EXP. ENL. TO:	
42. SYNOPSIS OF OFFENSE(S), DATE(S), AND SENTENCE ADJUDGED (ALSO AMPLIFYING REMARKS, MAY BE CONTINUED ON REVERSE) CYMAR22: SPECIAL COURT-MARTIAL DATE OF TRIAL: CYFEB28 VIOL UCMJ, ART. 128 - ASSAULT ON A PETTY OFFICER BY STRIKING HIM IN THE FACE WITH THIS FIST ON CYFEB10; VIOL UCMJ, ART. 134 - DRUNK AND DISORDERLY CONDUCT ON STATION ON CYFEB10. SENTENCE ADJUDGED: REDUCTION IN GRADE TO PAYGRADE E-3, FORF OF \$300.00 PAY PER MONTH FOR 3 MONTHS; CONF FOR 6 MONTHS, AND DISCHARGE FROM THE NAVAL SERVICE WITH A BCD. DATE SENTENCE ADJUDGED: CYFEB28 DATE IDENTIFICATION AND RESUME OF CONVENING, SUPERVISORY, OR OTHER AUTHORITY INCLUDING ACTION UNDER ARTICLES 65, 66, 67, 69, 72, 73, 74, OR 15 (D) OR (E), UCMJ, (ALSO ANY APPEAL)					
43. 1070/607 DTD CYMAR20		44. AUTHORITY TYPE CONVENING		CO, USS HERMITAGE	
45. (LSD 34) LTR SER 111 DTD CYMAR20 FWD ROT TO NMCMR					
CA'S ACTION: APPROVED AND, EXCEPT FOR THAT PORTION OF THE SENTENCE EXTENDING TO A BCD, ORDERED EXECUTED. THE FORF SHALL APPLY TO PAY BECOMING DUE ON OR AFTER THE DATE OF THIS ACTION. THE NAVAL BRIG, NORFOLK, VA IS DESIGNATED THE PLACE OF CONF. IAW ART. 58A(A), UCMJ, AND DISC JAGMAN, RIR TO E-1 EFFECTIVE AS OF THE DATE OF THIS ACTION. ROT FWD TO NMCMR FOR REVIEW IAW ART. 66, UCMJ.					
(MAY BE CONTINUED ON REVERSE)					
46. (SIGNATURE) BY DIRECTION PAUL T. BOAT, LNC, USN, BY DIR CO USS HERMITAGE		GRADE			
47. UNIT I.D. CODE 12345		48. RATE BTFR			
49. NAME (LAST, FIRST, MIDDLE) DOE, JOHN NMN		50. SSN 123-45-6789		51. BRANCH/CLASS USN	
COURT MEMORANDUM NAVPERS 1070/607 (REV. 12-75) S/N 0106-LF-010-6960 ☆ U.S. GOVERNMENT PRINTING OFFICE 1986-491-6481-40037					
RETAIN IN SERVICE RECORD					

Figure 8-16.-Court Memorandum, NAVPERS 1070/607—CA's action that approved and ordered executed the sentence awarded with the exception of the BCD.

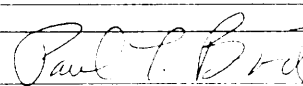
BUPERS USE ONLY		P601-7R		BUPERS USE ONLY	
COURT MEMORANDUM					
38					
1. DATE SUBMITTED CYMAR22		2. SHIP OR STATION AND LOCATION USS HERMITAGE (LSD 34)			
3. DATE OF REFERRAL CYFEB16		4. TYPE OF COURT SPECIAL		5. DATE OF COURT CYFEB28	
7. DATE OF ACTION CYMAR20		8. TYPE OF ACTION <input checked="" type="checkbox"/> REPORT OF ACTION		9. MODIFICATION OF ACTION <input type="checkbox"/>	
<input checked="" type="checkbox"/> 12. RATE ADJUSTMENT		13. FROM BT3		14. TO BTFN	
<input checked="" type="checkbox"/> 16. FORFEITURE		17. MONTHLY AMT. \$ 150.00		18. NO. MONTHS 3	
<input type="checkbox"/> 19. FINE		20. AMOUNT \$		21. CONSENT TO CHECKAGE <input type="checkbox"/>	
<input type="checkbox"/> 25. DETENTION		26. MONTHLY AMT. \$		27. NO. MONTHS	
29. DESERTION MARK REMOVED <input type="checkbox"/>		30. ADJUDGED <input type="checkbox"/>		31. ADJUDGED AND DIS-APPROVED <input type="checkbox"/>	
32. FROM		33. TO		34. DAYS LOST TIME (30 DAY BASIS)	
36. FROM		37. TO		35. DAYS LOST TIME (DAY FOR DAY)	
38. DAYS LOST TIME (30 DAY BASIS)		39. DAYS LOST TIME (DAY FOR DAY)		22. DOES NOT CONSENT TO CHECKAGE <input type="checkbox"/>	
40. CHANGE EAOS TO:		41. CHANGE EXP ENL TO:		23. MO. AMT. OF CHECKAGE \$	
42. SYNOPSIS OF OFFENSE(S), DATE(S), AND SENTENCE ADJUDGED (ALSO AMPLIFYING REMARKS, MAY BE CONTINUED ON REVERSE)					
<p>CYMAR22: SPECIAL COURT-MARTIAL DATE OF TRIAL: CYFEB28 VIOL UCMJ, ART. 128 - ASSAULT ON A PETTY OFFICER BY STRIKING HIM IN THE FACE WITH HIS FIST ON CYFEB10; VIOL UCMJ, ART. 134 - DRUNK AND DISORDERLY CONDUCT ON STATION ON CYFEB10. SENTENCE ADJUDGED: REDUCTION IN GRADE TO PAYGRADE E-3, FORFEITURE OF \$300.00 PAY PER MONTH FOR 3 MOS; AND CONF FOR 2 MOS. DATE SENTENCE ADJUDGED: CYFEB28</p>					
DATE IDENTIFICATION AND RESUME OF CONVENING, SUPERVISORY, OR OTHER AUTHORITY INCLUDING ACTION UNDER ARTICLES 65, 66, 67, 69, 72, 73, 74, OR 15 (D) OR (E), UCMJ, (ALSO ANY APPEAL)					
43. 1070/607 DTD CYMAR20		44. AUTHORITY TYPE CONVENING			
45. (LSD 34) LTR SER 146 DTD CYMAR20 FWD ROT TO COMPHIBGRU TWO					
<p>CA'S ACTION: ONLY SO MUCH OF THE SENTENCE AS PROVIDES FOR REDUCTION IN GRADE TO PAYGRADE E-3, FORF OF \$150.00 PAY PER MONTH FOR 3 MOS AND CONF FOR 2 MOS IS APPROVED AND ORDERED EXECUTED. THE FORF SHALL APPLY TO PAY BECOMING DUE ON AND AFTER THE DATE OF THIS ACTION. THE NAVAL BRIG, NAVSTA, NORFOLK, VA, IS DESIGNATED AS THE PLACE OF CONFINEMENT. ROT FWD TO COMPHIBGRU TWO, NORFOLK, VA FOR REVIEW IAW ART. 64(C), UCMJ.</p>					
MAY BE CONTINUED ON REVERSE					
		<div style="border: 1px solid black; padding: 5px;">  46. (SIGNATURE) BY DIRECTION GRADE PAUL T. BOAT, LNC, USN, BY DIR CO USS HERMITAGE (LSD 34) </div>			
		47. UNIT I.D. CODE 12345		48. RATE BTFN	
49. NAME (LAST, FIRST, MIDDLE) DOE, JOHN NMN		50. SSN 222-22-2222		51. BRANCH CLASS USN	
<small>COURT MEMORANDUM NAVPERS 1070, 607 (REV. 12-75) S. N. 0106 LF 010, 6960</small> <div style="display: flex; justify-content: space-between;"> ★ U.S. GOVERNMENT PRINTING OFFICE: 1985-461-657 S-20015 RETAIN IN SERVICE RECORD </div>					

Figure 8-17.-Court Memorandum, NAVPERS 1070/607—CA's action in which the CA only partially approved the sentence and ordered it executed.

**WAIVER/WITHDRAWAL OF APPELLATE RIGHTS IN GENERAL AND SPECIAL
COURTS—MARTIAL SUBJECT TO REVIEW BY A COURT OF MILITARY REVIEW**

NOTE: See R.C.M. 1203(b) concerning which cases are subject to review by a Court of Military Review. See R.C.M. 1110 concerning waiver or withdrawal of appellate review.

I have read the attached action dated _____.

I have consulted with _____, my (associate) defense counsel concerning my appellate rights and I am satisfied with his/her advice.

I understand that:

1. If I do not waive or withdraw appellate review —

- a. My court-martial will be reviewed by the _____ Court of Military Review.
- b. The Court of Military Review will review my case to determine whether the findings and sentence are correct in law and fact and whether the sentence is appropriate.
- c. After review by the Court of Military Review, my case could be reviewed for legal error by the United States Court of Military Appeals, on petition by me or on request of the Judge Advocate General.
- d. If the Court of Military Appeals reviews my case, my case could be reviewed for legal error by the United States Supreme Court on petition by me or the Government.
- e. I have the right to be represented by military counsel, at no cost to me, or by civilian counsel, at no expense to the United States, or both, before the Court of Military Review, the Court of Military Appeals, and the Supreme Court.

2. If I waive or withdraw appellate review —

- a. My case will not be reviewed by the Court of Military Review, or be subject to further review by the Court of Military Appeals, or by the Supreme Court under 28 U.S.C. 1259.
- b. My case will be reviewed by a judge advocate for legal error, and I may submit in writing allegations of legal error for consideration by the judge advocate.
- c. After review by the judge advocate and final action in my case, I may petition the Judge Advocate General for correction of legal errors under Article 69(b). Such a petition must be filed within 2 years of the convening authority's action, unless I can show good cause for filing later.
- d. A waiver or withdrawal, once filed, cannot be revoked, and bars further appellate review.

Understanding the foregoing, I (waive my rights to appellate review) (withdraw my case from appellate review). I make this decision freely and voluntarily. No one has made any promises that I would receive any benefits from this waiver/withdrawal, and no one has forced me to make it.

TYPED NAME OF ACCUSED

RANK OF ACCUSED

SIGNATURE OF ACCUSED

DATE

DD FORM 2330
84 AUG

Figure 8-18.—Waiver/Withdrawal of Appellate Rights in GCM and SPCM Subject to Review by a Court of Military Review, DD Form 2330.

STATEMENT OF COUNSEL

(Check appropriate block)

- ☐ 1. I represented the accused at his/her court-martial.
- ☐ 2. I am associate counsel detailed under R.C.M. 1110(b). I have communicated with the accused's (detailed) (individual military) (civilian) (appellate) defense counsel concerning the accused's waiver/withdrawal and discussed this communication with the accused.
- ☐ 3. I am substitute counsel detailed under R.C.M. 1110(b).
- ☐ 4. I am a civilian counsel whom the accused consulted concerning this matter. I am a member in good standing of the bar of _____.
- ☐ 5. I am appellate defense counsel for the accused.

I have advised the accused of his/her appellate rights and of the consequences of waiving or withdrawing appellate review. The accused has elected to (waive) (withdraw) appellate review.

TYPED NAME OF COUNSEL

UNIT OF COUNSEL

RANK OF COUNSEL

BUSINESS ADDRESS (If Civilian Counsel)

SIGNATURE OF COUNSEL

DATE

DD Form 2330 Reverse, 84 AUG

Figure 8-18.—Waiver/Withdrawal of Appellate Rights in GCM and SPCM Subject to Review by a Court of Military Review, DD Form 2330—Continued.

**WAIVER/WITHDRAWAL OF APPELLATE RIGHTS IN GENERAL COURTS—MARTIAL
SUBJECT TO EXAMINATION IN THE OFFICE OF THE JUDGE ADVOCATE GENERAL**

NOTE: See R.C.M. 1201(b)(1) concerning which cases are subject to examination in the Office of the Judge Advocate General. See R.C.M. 1110 concerning waiver or withdrawal of appellate review.

I have read the attached action, dated _____.

I have consulted with _____, my (associate) defense counsel concerning my appellate rights and I am satisfied with his/her advice.

I understand that:

1. If I do not waive or withdraw appellate review —
 - a. My case will be examined in the Office of the Judge Advocate General to determine whether the findings and sentence are legally correct and whether the sentence is appropriate.
 - b. After examination in the Office of the Judge Advocate General and final action in my case, I may petition the Judge Advocate General for review under Article 69(b). Such a petition must be filed within 2 years after the convening authority took action in my case, unless I can show good cause for filing later.
2. If I waive or withdraw appellate review —
 - a. My case will not be examined in the Office of the Judge Advocate General under Article 69(a), UCMJ.
 - b. My case will be reviewed by a judge advocate for legal error, and I may submit in writing allegations of legal error for consideration by the judge advocate.
 - c. After review by the judge advocate and final action in my case, I may petition the Judge Advocate General for review under Article 69(b). Such a petition must be filed within 2 years after the convening authority took action in my case, unless I can show good cause for filing later.
 - d. A waiver or withdrawal, once filed, may not be revoked.
3. Understanding the above, I hereby (waive my rights to appellate review) (withdraw my case from appellate review). I make this decision freely and voluntarily. No one has made any promises that I would receive any benefits from this waiver/withdrawal, and no one has forced me to make it.

TYPED NAME OF ACCUSED

RANK OF ACCUSED

SIGNATURE OF ACCUSED

DATE

DD FORM 2331
84 AUG

S/N 0102-LF-002-3310

Figure 8-19.—Waiver/Withdrawal of Appellate Rights in GCM Subject to Examination in the Office of the Judge Advocate General, DD Form 2331.

STATEMENT OF COUNSEL

(Check appropriate block)

- ☐ 1. I represented the accused at his/her court-martial.
- ☐ 2. I am associate counsel detailed under R.C.M. 1110(b). I have communicated with the accused's (detailed) (individual military) (civilian) (appellate) defense counsel concerning the accused's waiver/withdrawal and discussed this communication with the accused.
- ☐ 3. I am substitute counsel detailed under R.C.M. 1110(b).
- ☐ 4. I am a civilian counsel whom the accused consulted concerning this matter. I am a member in good standing of the bar of _____.
- ☐ 5. I am appellate defense counsel for the accused.

I have advised the accused of his/her appellate rights and of the consequences of waiving or withdrawing appellate review. The accused has elected to (waive) (withdraw) appellate review.

TYPED NAME OF COUNSEL

UNIT OF COUNSEL

RANK OF COUNSEL

BUSINESS ADDRESS (If Civilian Counsel)

SIGNATURE OF COUNSEL

DATE

DD Form 2331 Reverse, 84 AUG

☆ U.S. GOVERNMENT PRINTING OFFICE: 1984 — 705-012/16235

Figure 8-19.-Waiver/Withdrawal of Appellate Rights in GCM Subject to Examination in the Office of the Judge Advocate General, DD Form 2331—Continued.

simply, procedures applicable to Navy personnel provide authority to place a member on mandatory appellate leave; the member can also request voluntary appellate leave. Members placed on mandatory appellate leave will be provided transportation to their home of record or place from which called to active duty. An entry will be made on a NAVPERS 1070/613, page 13, of the service record that will include a Privacy Act statement. The entry must be signed by the member and approved by the officer authorized to sign such entries.

Members may be granted voluntary appellate leave upon written request. The request must be approved by the OEGCMJ over the member and be in the best interest of the service. In the case of an SPCM, an officer then exercising SPCM jurisdiction may authorize appellate leave. Differing from mandatory appellate leave, personnel requesting appellate leave will not be provided transportation to their home of record.

Members not electing the leave option will be retained on temporary duty in a disciplinary status at the transient personnel unit collocated with the confinement site. Upon approval of the sentence by the CA, the member's leave status changes from voluntary to involuntary.

The following applies to all members placed on appellate leave:

- For members stationed outside the continental United States (CONUS), family member travel and household goods (HHG) shipment will be authorized or approved to home of record when the GCM authority or SPCM authority over the member determines such to be in the best interest of the government. See *Joint Federal Travel Regulations* (JFTR), U5370-D8 and U5240-2. For members stationed in CONUS, with family members, travel and HHG shipment may be authorized at the discretion of the CA. For members stationed in CONUS, without family members, HHG shipment is not authorized.

- Members will return all uniforms or civilian clothing issued by the government and will return all other property owned by the government.

- Pay and allowances will terminate as of the date of departure or date of expiration of accrued leave.

- Before departure the member must have a thorough physical examination.

- The member's private automobile decal will be removed.

- Both member and dependent's ID cards are turned in. New ID cards are then issued for a period of 3 months with appellate leave status stamped across the ID card.

- Members are not eligible for space-available travel. Refer to OPNAVINST 4630.25 and NAVMIL-PERSCOMINST 4650.2

DISPOSITION OF RECORDS OF TRIAL AFTER ACTION BY THE CA

The CA's action for every trial by court-martial is reviewed by higher authority. Certain reviews are mandatory. Once these mandatory reviews are completed the case is final. Other reviews are discretionary. For example, the accused and his or her counsel must decide whether to petition the COMA for review of the case, whether to petition for review by JAG, or whether to petition for a new trial. The terms *mandatory* and *discretionary* reviews imply opposite concepts. In the former case, further review will happen regardless of the accused's wishes. In the latter case, further review will happen only if the accused or some other person takes some positive action. The concept of waiver and withdrawal gives an accused the option, except in a case involving death, to avoid appellate review.

Forwarding a GCM to the Judge Advocate General

A record of trial by a GCM and the CA's action will be sent directly to JAG if the approved sentence includes death or if the accused has not waived appellate review. The original and three copies of the order promulgating the results of trial will be sent with the original record of trial.

Forwarding a GCM to a Judge Advocate

You will send a record of trial by GCM and the CA's action directly to a judge advocate for review if the sentence does not include death and if the accused has waived appellate review. You must also include the original and three copies of the order promulgating the results of trial with the original record of trial.

SPCM With an Approved BCD

If the approved sentence of an SPCM includes a BCD, you will dispose of the record in the same manner as provided for in a record of trial by a GCM.

Other SPCMs

With a record of trial by an SPCM in which the approved sentence does not include a BCD you will send it directly to a judge advocate for review. Include four copies of the promulgating order with the record of trial.

SCM

Send a record of trial by SCM to a judge advocate for review.

REVIEW BY A JUDGE ADVOCATE GENERAL

Article 64, UCMJ, and Rules for Courts-Martial (R.C.M.) 1112 require that all SCMs, non-BCD SPCMs, and all other noncapital courts-martial where appellate review has been waived or withdrawn by the accused be reviewed by a judge advocate. The JAGMAN requires this officer to be the SJA of an OEGCMJ who, at the time of trial, could have exercised such jurisdiction over the accused. In all cases, the action of the CA will identify the officer to whom the record is sent by stating his or her official title.

Form and Content of a Judge Advocate's Review

The judge advocate's review is a written document containing the following:

- A conclusion as to whether the court-martial had jurisdiction over the accused and over each offense for which there is a finding of guilty that has not been disapproved by the CA
- A conclusion as to whether each specification for which there is a finding of guilty that has not been disapproved by the CA stated an offense
- A conclusion as to whether the sentence was legal
- A response to each allegation of error made in writing by the accused
- In cases requiring action by the OEGCMJ, as noted in the following paragraph, a recommendation as

to appropriate action and an opinion as to whether corrective action is required as a matter of law

After the judge advocate has completed his or her review, most cases reach the end of mandatory review and will be considered final within the meaning of Article 76, UCMJ. If this is the case, the judge advocate's review will be attached to the original record of trial and a copy sent to the accused.

For SCM and SPCM cases not involving a BCD or where a shore activity judge advocate's review is the final action, the judge advocate's office will retain the original record of proceedings for a period of 2 years after final action. At the termination of such retention period, the original record of proceedings is transferred to the National Personnel Records Center, 9700 Page Boulevard, St. Louis, Missouri 63132. For fleet activities where the record of proceedings has been reviewed under Article 64, MCM, the original record of proceedings is retained for a period of 3 months after final action. At the expiration of the retention period, send the record to the National Personnel Records Center.

Forwarding of Record of Trial to Officer Exercising General Court-Martial Jurisdiction

The review is not final, and a further step is required, however, in the following two situations:

1. The judge advocate recommends corrective action.
2. The sentence as approved by the CA includes a dismissal, a DD or BCD, or confinement for more than 6 months.

The existence of either of these two situations will require the SJA to send the record of trial to the OEGCMJ for further action.

Action by Officer Exercising General Court-Martial Jurisdiction

The OEGCMJ who receives a record of trial may:

- disapprove or approve the findings or sentence in whole or in part;
- remit, commute, or suspend the sentence in whole or in part;
- order a rehearing on the findings, on the sentence, or on both except where the evidence was insufficient at the trial to support the findings; or

- dismiss the charges.

If the OEGCMJ orders a rehearing, but the CA finds a rehearing impractical, the CA will dismiss the charges. After the OEGCMJ has taken action, the accused will be notified of that action and the accused will be provided with a copy of the judge advocate's review.

Forwarding a Record of Trial to the Judge Advocate General

Assuming that appellate review has not been waived or withdrawn by the accused, an SPCM involving a BCD, whether or not suspended, will be sent directly to the Office of the Judge Advocate General of the Navy. After detailing appellate defense and government counsel, the case will then be sent to the NCMCMR.

REVIEW IN THE OFFICE OF THE JUDGE ADVOCATE GENERAL

Article 69(b), UCMJ, provides that certain cases may be reviewed in the Office of the Judge Advocate General and that the findings or sentence, or both, may be vacated or modified by JAG on the grounds of newly discovered evidence, fraud on the court, lack of jurisdiction, or error prejudicial to the substantial rights of the accused. Review under this article may only be granted in a case that has been "finally" reviewed, but has not been reviewed by the NCMCMR. Even then, such review by JAG is not automatic. The accused must petition JAG to review the case and JAG may or may not agree to do so. If the case is reviewed, JAG may or may not grant relief.

Article 73, UCMJ, provides that, under certain limited conditions, an accused can petition JAG to have his or her case tried again even after the conviction has become final by completion of appellate review. This is not another trial such as that ordered to cure jurisdictional defects. This is a *trial de novo*— a brand new trial-as if the accused had never been tried at all.

There are only two grounds for petition: (1) newly discovered evidence and (2) fraud on the court.

Sufficient grounds will be found to exist only if it is established that an injustice has resulted from the findings or sentence and that a new trial would probably produce a substantially more favorable result.

REVIEW BY A NAVY-MARINE CORPS COURT OF MILITARY REVIEW

An NCMCMR reviews cases referred to it by JAG. The NCMCMR has review authority similar to that of the CA, except that it may not suspend any part of the sentence. The NCMCMR is also limited to reviewing only those findings and sentences that have been approved by the CA. In other words, it may not increase the sentence approved by the CA, nor may it approve findings of guilty already disapproved by the CA.

Action on Review and Forwarding of Cases

JAG may send the decision of the NCMCMR to the COMA for review with respect to any matter of law. In such a case, JAG will cause a copy of the decision of the NCMCMR and the order forwarding the case to be served on the accused and on the appellate DC.

In a case reviewed by the NCMCMR in which the court sets aside the sentence and JAG does not send the case to the COMA, JAG will instruct an appropriate CA to take action according to the decision of the NCMCMR. If the NCMCMR orders a rehearing, the record will be sent to an appropriate CA. If the CA finds a rehearing impractical the CA may dismiss the charges.

If the NCMCMR affirms any sentence that includes death, JAG transmits the record of trial and the decision of the NCMCMR directly to the COMA when any period for reconsideration has expired.

If the NCMCMR affirms any sentence other than one that includes death, JAG causes a copy of the decision of the NCMCMR to be served on the accused.

If JAG believes that a sentence affirmed by the NCMCMR, other than one that includes death, should be remitted or suspended in whole or in part, JAG may, before taking action, send the record of trial and the decision of the NCMCMR to SECNAV with a recommendation for action under Article 74, UCMJ, or may take such action as he or she is authorized under Article 73(a), UCMJ.

If the decision of the NCMCMR is not subject to review by the COMA or, if JAG has not sent the case to the COMA and the accused has not filed a petition to the COMA, JAG will do the following:

- If the sentence affirmed by the NCMCMR includes a dismissal, send the record, the decision of the NCMCMR, and JAG's recommendation to SECNAV for action.

- If the sentence affirmed by the NMCMR does not include a dismissal, notify the CA, the OEGCMJ over the accused, or SECNAV who may order into execution any unexecuted sentence affirmed by the NMCMR.

Notification to Accused

The accused is notified of the decision of the NMCMR. If the accused has the right to petition the COMA for review, the accused is provided with a copy of the decision of the NMCMR bearing an endorsement notifying the accused of this right. The endorsement informs the accused that such a petition:

- may be filed only within 60 days from the time the accused was notified of the decision of the NMCMR or the mailed copy of the decision was postmarked, whichever is earlier; or
- may be sent through the officer immediately exercising general court-martial jurisdiction over the accused and through JAG or filed directly with the COMA.

The accused may be notified personally or a copy of the decision may be sent, after service on appellate counsel, by certified First-Class Mail to the accused. If JAG sends the case to the COMA, the accused should be so notified.

REVIEW BY A COURT OF MILITARY APPEALS

The COMA reviews the record in all cases:

- in which the sentence, as affirmed by an NMCMR, extends to death;
- reviewed by an NMCMR that JAG orders sent to a COMA for review; and
- reviewed by an NMCMR, except those referred to it by JAG, in which, upon petition by the accused and on good case shown, the COMA grants a review.

In cases reviewed, a COMA has authority to act only on matters of law. A COMA does not have the authority to (1) weigh the evidence; (2) judge the credibility of witnesses; or (3) make new findings of fact.

Whether there is sufficient evidence to sustain a finding of guilty, however, is a matter of law.

In a case certified by JAG to a COMA, action by the COMA is not restricted to the issues certified by JAG. In a case reviewed upon petition of an accused, the court

is required to take action only with regard to the issues specified in the grant of review.

ACTION ON DECISION BY A COURT OF MILITARY APPEALS

After it acts on a case, the COMA may direct JAG to return the record to the NMCMR for further proceedings according to the decision of the court. Otherwise, unless the decision is subject to review by the Supreme Court, or there is to be further action by the President of the United States or SECNAV, JAG will instruct the CA to take action according to the decision of the COMA.

If the COMA affirms a sentence that must be approved by the President before it can be executed, JAG sends the record of trial, the decision of the NMCMR, the decision of the COMA, and the recommendation of JAG to SECNAV for the action of the President.

REVIEW BY THE UNITED STATES SUPREME COURT

Finally, review by the United States Supreme Court is possible under 28 U.S.C. § 1259 and Article 67(h), UCMJ. Decisions of the COMA may be reviewed by the Supreme Court by a *writ of certiorari* in the following cases:

- Cases reviewed by the COMA under Article 67(b)(1)
- Cases certified to the COMA by JAG under Article 67(b)(2)
- Cases in which the COMA granted a petition for review under Article 67(b)(3)
- Cases other than those described previously that the COMA has granted relief

A *writ of certiorari* is an order by the appellate court that is used by that court when it has discretion on whether or not to hear an appeal from a lower court. If the writ is denied, the court refuses to hear the appeal and, in effect, the previous judgement stands unchanged. If the writ is granted, then it has the effect of ordering the lower court to certify the record and send it to the higher court that has used its discretion to hear the appeal.

The Supreme Court may not review by a *writ of certiorari* any action of a COMA in refusing to grant a petition for review.

After the Supreme Court has taken action, other than denial of a petition for a *writ of certiorari*, in any case, JAG will, unless the case is returned to the COMA for further processing, send the case to the President or SECNAV, or instruct the CA to take action according to the decision.

VACATION OF SUSPENDED SENTENCE

An act of misconduct, to serve as the basis for vacation of the suspension of a sentence, must occur within the period of suspension. The order vacating the suspension is issued before the expiration of the period of suspension. The running of the period of suspension is interrupted by the unauthorized absence of the probationer or by commencement of proceedings to vacate the suspension. R.C.M. 1109 indicates that vacation of a suspended sentence may be based on a violation of the UCMJ. Furthermore, when all or part of the sentence has been suspended as a result of a pretrial agreement, the suspension may be vacated for violation of any of the lawful requirements of the probation, including the duty to obey the local civilian law (as well as military law), to refrain from associating with known drug users or dealers, and to consent to searches of his or her person, quarters, and vehicle at any time.

AUTHORITY, PROCEDURE, AND ACTION BY THE OFFICER HAVING SPCM JURISDICTION

Procedural rules for hearing requirements depend on the type of suspended sentence being vacated.

- Sentence of any GCM or an SPCM including an approved BCD. If the suspended sentence was adjudged by a GCM, or by an SPCM that included an approved BCD, the following rules apply. After giving notice to the accused, the officer having SPCM jurisdiction over the probationer personally holds a hearing to inquire into the alleged violation of probation. The procedure for the hearing is similar to that prescribed for a formal pretrial investigation (Article 32, UCMJ), and the accused has the right to detailed and/or civilian counsel at the hearing. The record of the hearing and the recommendations of the SPCM authority are sent to the OEGCMJ who may vacate the suspension.

- Sentence of an SPCM not including a BCD or sentence of an SCM. If the suspended sentence was adjudged by an SPCM and does not include a BCD, or if the sentence was adjudged by an SCM, the following rules apply. The officer having SPCM jurisdiction over the probationer personally holds a hearing to inquire into

the alleged violation of probation. The procedure for the hearing is similar to that prescribed for a formal pretrial investigation. The probationer must be accorded the same right to counsel at the hearing that he or she was entitled to at the court-martial that imposed the sentence, except there is no right to request individual military counsel. Counsel does not need to be the same counsel who originally represented the probationer. If the officer having SPCM jurisdiction over the probationer decides to vacate all or a portion of the suspended sentence, he or she records the evidence that he or she relied on and the reasons for vacating the suspension in his or her action.

The officer who actually vacates the suspension executes a written statement including a summary of the evidence he or she is relying on and his or her reasons for vacating the suspension.

If, based on an act of misconduct in violation of the terms of suspension, the accused is confined before the actual vacation of the suspended sentence, a preliminary hearing must be held before a neutral and detached officer to determine whether there is probable cause to believe the accused has violated the terms of his or her suspension. JAGMAN 0150 indicates that this officer should be one who is appointed to review pretrial confinement under R.C.M. 305.

RECORD OF PROCEEDINGS TO VACATE SUSPENDED SENTENCE

The officer who conducts the vacation proceeding makes a summarized record of the proceeding, using DD Form 455, Report of Proceedings to Vacate Suspension of General Court-Martial Sentence or of a Special Court-Martial Sentence Including a Bad-Conduct Discharge, and sends the record and his or her written recommendation about vacation to the OEGCMJ over the probationer.

ACTION BY THE OFFICER EXERCISING GCM JURISDICTION

Based on the record produced by and the recommendation of the officer exercising special court-martial jurisdiction over the probationer, the OEGCMJ over the probationer decides whether the probationer violated a condition of suspension and, if so, whether to vacate the suspended sentence. If the OEGCMJ decides to vacate, he or she prepares a written statement of evidence relied on and the reasons for vacating.

Any unexecuted part of a suspended sentence ordered vacated is vacated at this point.

CLEMENCY

What is clemency? Clemency is defined as that action, other than the correction of a legal error, that results in mitigation, remission, or suspension of the whole or any part of the unexecuted portion of a court-martial sentence, restoration to duty, or full or partial restoration of paygrade.

RECOMMENDATION FOR CLEMENCY

When an accused is convicted, an important posttrial duty of the DC is to prepare, in a proper case, a recommendation for clemency. The recommendation is made to the CA. However, since the recommendation is attached to the record of trial, it can be considered by any reviewing authority who has the power to act upon the recommendations; for example, JAG or the NCMR. The DC usually initiates the recommendation for clemency. However, it may also be initiated by a court member.

Mitigating circumstances that could not be taken into consideration in determining the sentence may be a basis for a recommendation for clemency; either the court members or the military judge may wish to recommend that the CA suspend the sentence since the court has no power to award a suspended sentence. The recommendation should be specific as to the reasons for the recommendation. A recommendation for clemency should never be based upon a doubt as to the accused's guilt.

When considered appropriate, disposition boards, commanding officers, or BUPERS may, with respect to the unexecuted parts of a sentence, recommend one or more of the following:

- Restoration to duty on probation
- Remission of the punitive discharge or dismissal
- Reduction in confinement, forfeitures, or fines
- Mitigation of the discharge to one less severe
- Full or partial restoration to paygrade or precedence
- No clemency

NAVAL CLEMENCY AND PAROLE BOARD

The Naval Clemency and Parole Board was established by SECNAV to make appropriate recommendations in the cases of Navy and Marine Corps personnel eligible for clemency consideration. The board is composed of representatives of the Commandant of the Marine Corps, the Chief of Naval Personnel, the Judge Advocate General, the Chief, Bureau of Medicine and Surgery, and the Navy Council of Personnel Boards. The board bases its recommendations on the background of the individual concerned—his or her civil and military history, adjustment in confinement or while awaiting completion of appellate review if not confined, motivation for future service, the nature and circumstances of the offense(s), the recommendation of the commanding officer, and the recommendation of the Chief of Naval Personnel.

Recommendations to the Naval Clemency and Parole Board must comply with the provisions of SECNAVINST 5815.3. This instruction sets forth explicit directions and procedures for the submission of requests for clemency. At a minimum, the following documents must be submitted with a request for clemency:

- Petitioner's request
- Court-martial progress report
- Court-martial order and any supplementary court-martial orders
- Judge advocate's review
- The record of trial

SUMMARY

The material covered in this chapter is an important aspect of the total court-martial procedure. The posttrial actions required after a court-martial has adjourned is just another aspect of the Legalman rating. Normally those LNs assigned to duty with a CA/SJA will handle the larger part of posttrial administrative work. These procedures are very important and the regulations governing them must be strictly followed in order to guarantee cases will not be overturned on appeal.